

Guidance on Availability of Flood Insurance in Monroe County, FL

The Federal Emergency Management Agency (FEMA) promulgated Policy Issuance 2-2005 to comply with the September 12, 2005 Court Order issued in *Florida Key Deer v. FEMA*, 90-10037-CIV-Moore (S.D.FL.). The Court Order enjoins “FEMA from issuing flood insurance for new developments in suitable habitat” as identified by the United States Fish and Wildlife Service in Monroe County, Florida. See www.fws.gov/filedownloads/ftp_verobeach/MONROE-PARCELS. The Court defined “new development” as “any residential or commercial development where construction of the structure has not yet begun as of the entry of this Order.”

On December 16, 2005, the Court modified the injunction regarding the sale of flood insurance by clarifying its definition of “new development.” The Court stated that “Reconstruction, redevelopment, renovation, replacement or expansion of a structure that existed on the site prior to September 12, 2005 (‘the action’) shall not be considered ‘new development,’ if:

- (1) the action results in the same use or a less intensive use; (e.g., single family home for single family home, duplex for duplex, multifamily for multifamily with the same or fewer number of units, commercial for commercial, duplex to single family home, or similar net reduction in the number of dwelling or commercial units); and
- (2) the action no more than doubles the footprint or square footage of the original structure, or totals no more than 1500 square feet, whichever is larger; and
- (3) the action does not entail clearing or using any areas on the site outside of areas that were cleared, paved, or within the footprint of the pre-existing structure on September 12, 2005.

In order for a property owner to qualify for flood insurance under the National Flood Insurance Program (‘NFIP’) in conjunction with any reconstruction, redevelopment, renovation, replacement or expansion of a structure on property included in the list of Monroe County Real Estate Numbers in Suitable Habitat 9/05 (DE#238), the owner shall obtain from the local government having jurisdiction to issue a building permit for that property a certification to FEMA and FWS that, at the time the permit is issued, the proposed project complies with the parameters set forth in paragraphs (1), (2), and (3) above; and a second certification to FEMA and FWS after passing final inspection that the property, as built, complies with the parameters set forth in paragraphs (1), (2), and (3) above.

A mobile home replaced with a modular home, or replaced by a home built by traditional methods, shall be considered the ‘same use’ for purposes of this Order.”

The communities participating in the National Flood Insurance Program that are affected by this Order are: Unincorporated Monroe County #125129, Islamorada #120424, Marathon #120681, Key West #120168, Layton #120169, and Key Colony Beach #125121.

The “actual start of construction” is the date of either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. WYO Companies and the NFIP Servicing Agent are required to obtain documentation showing that the “actual start of construction” occurred prior to September 12, 2005, when the building is located on a real estate parcel identified as “suitable habitat” by the FWS. This requirement to obtain documentation applies to all buildings that have a building permit date or date of “actual start of construction” on or after March 16, 2005. March 16, 2005, was selected because the NFIP regulations allow an applicant to list the permit date in the “date of construction block” of the Standard Flood Insurance Policy application when the “actual start of construction” occurs within 180 days from receiving a building permit.

Examples of acceptable documentation include a copy of an inspection form from the permit office showing the date of completion of an early aspect of the construction process, such as the pouring of the foundation or documentation from the builder describing the first placement of permanent construction and the date of the placement.

In addition to providing documentation substantiating the “actual start of construction”, documentation must also include the real estate parcel number if it is determined that the building is considered “new development”. Acceptable documentation would include copies of the plat plan, the elevation certificate, the tax assessment form, the deed, or any other legal document showing the real estate parcel number. If the building is not considered new development because it complies with the new parameters set forth above, then a copy of the certifications from the community stating compliance with the Court Order must be obtained. Insurers should be aware that in cases of substantial improvement or substantial damage to buildings located in suitable habitat, that certifications from the community must also be obtained.